

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Delivery Prohibition for USTs
(LAC 33:XI.401 and 403) (UT015)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt the Underground Storage Tanks regulations, LAC 33:XI.401 and 403 (Log #UT015).

The proposed rule establishes standards for the red tag/delivery prohibition of regulated substances for underground storage tanks (USTs). It sets forth the requirements the owner/operator of the UST must meet in order to continue to receive delivery of fuel, and for when the department may prohibit the delivery of fuel. The 2005 Underground Storage Tank Compliance Act, which amends Section 9003 in Subtitle I of the Solid Waste Disposal Act, mandates states authorized to administer the Underground Storage Tank Program to take certain actions to reduce the incidence of leaking USTs. One such action is to establish delivery prohibition of regulated substances for USTs that have not met the required 1998 standards or are not compliant with spill prevention, overfill protection, release detection, corrosion protection, or registration requirements. This action must be implemented to maintain funding of the UST program in the state and to provide a serious consequence to those owners and operators that continue to be out of compliance with the regulations. This action will further enhance our effort to maintain protection of human health and the environment. The basis and rationale for this rule are to prevent contamination to the environment from underground storage tanks.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on July 25, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by UT015. Such comments must be received no later than August 1, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225)

219-3168. Check or money order is required in advance for each copy of UT015. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tanks

Chapter 4. 2005 Federal Underground Storage Tank Compliance Act Mandated Requirements

§401. Purpose

A. This Chapter implements requirements mandated by the Underground Storage Tank Compliance Act, 42 U.S.C. 6991.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:**.

§403. Delivery Prohibition of Regulated Substances to Underground Storage Tank Systems

A. Underground storage tank (UST) systems, except for those systems deferred or exempted from specified Chapters and Sections of these regulations in accordance with LAC 33:XI.101.C, that do not meet any one of the following requirements, upon discovery by the department, shall be subject to the status of red tag/delivery prohibition of regulated substances:

1. installation of spill prevention equipment in accordance with LAC 33:XI.Chapter 3;
2. installation of overfill protection equipment in accordance with LAC 33:XI.Chapter 3;
3. establishment of release detection methods or installation of release detection equipment in accordance with LAC 33:XI.Chapter 7;
4. installation of corrosion protection equipment in accordance with LAC 33:XI.Chapter 3;
5. compliance with LAC 33:XI.301.C.4; or
6. upon evidence of a below-surface release from an UST system, initiation by the owner/operator of release investigation and confirmation steps in accordance with LAC 33:XI.711, or compliance with the release response and corrective action requirements in LAC 33:XI.715.

B. Noncompliance with these regulations as listed in this Subsection shall result in a red tag/delivery prohibition of regulated substances if response action is not taken by the owner/operator within 30 days of receipt of written notification by the department to the owner/operator. Response action will be considered as taken if the owner/operator has contracted and scheduled the action to take place within those 30 days and the response action has been initiated within 60 days of receipt of the written notification. The forms of noncompliance are:

1. failure to properly operate and/or maintain release detection equipment in accordance with LAC 33:XI.Chapter 7. Failure to provide records, within 10 days of request by the department, showing proper operation and/or maintenance of release detection equipment shall be considered a failure to properly operate and/or maintain the release detection equipment;
2. failure to properly operate and/or maintain spill, overfill, or corrosion protection equipment in accordance with LAC 33:XI.Chapter 5. Failure to provide records, within 10 days of request by the department, showing the type of spill, overfill, or corrosion protection equipment installed and the proper operation and/or maintenance of spill, overfill, or

corrosion protection equipment shall be considered a failure to properly operate and/or maintain the spill, overfill, or corrosion protection equipment;

3. failure to maintain financial responsibility in accordance with LAC 33:XI.Chapter 11;

4. failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances in accordance with LAC 33:XI.303.B.2 and C.4. Failure to produce records, within 10 days of request by the department, showing procedures and/or practices designed to protect from corrosion buried metal piping and/or components that routinely contain regulated substances shall be considered a failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances.

C. It shall be unlawful for any person to place, or allow the placement of, a regulated substance into an UST that the department has red tagged/prohibited from delivery of regulated substances under Subsection A or B of this Section. The department may use its discretion in determining whether a non-delivery due to a red tag/delivery prohibition of regulated substances may jeopardize the availability of, or access to, motor fuel in remote areas of the state or in cases where an emergency declaration is in effect. When the department determines that red tagging/delivery prohibition will jeopardize the availability of, or access, to regulated substances, specifically motor fuels, in remote areas or in cases of an emergency declaration, it may allow for continued delivery of regulated substances, for up to 180 days, to an UST that has failed to have equipment required under Subsection A of this Section installed or that has been deemed noncompliant by the department under Subsection B of this Section.

D. The department shall provide adequate notice to UST system owners/operators and regulated substance deliverers that an UST has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance. Placing or allowing placement of a regulated substance into an UST determined ineligible for delivery, deposit, or acceptance of a regulated substance constitutes a violation of this Section.

E. The owner/operator of an UST that has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance must make the necessary system repairs or upgrades, or remedy any form of noncompliance, and must be cleared of the red tag/delivery prohibition in writing by the department, or a person authorized by the department, in order to be removed from the red tag listing and be deemed eligible for delivery of regulated substances. The department, or a person authorized by the department, shall remove the red tag/delivery prohibition status for an UST system within two working days after compliance and/or upgrade or repair has been demonstrated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: UT015

Person

Preparing

Statement: Steve ChustzDept.: Environmental QualityPhone: 225-219-3388Office: Environmental Assessment

Return

Address: 602 N. Fifth
Baton Rouge, LA 70802

Rule

Title: Delivery Prohibition for Underground
Storage Tanks (LAC 33:XI.Chapter 4)

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Initially the department will experience an increase in workload from setting up a database to track red-tagged underground storage tanks (USTs), the tagging and removal of tags, and other procedural aspects of program implementation. This effort is minimized by the fact that inspections are currently being performed, with follow-up inspections where problems are noted.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Owners and operators of USTs that are not upgraded or are in violation of the 1998 requirements, and motor fuel distributors to those owners and operators, will be affected by this proposed rule. Owners and operators will not be able to receive additional motor fuel until they bring their USTs into compliance with the regulations. This will affect the owners' and operators' business operations until their USTs are in compliance. The motor fuel distributors will be impacted by the loss of a sale to these owners and operators. It is important to note that owners/operators found in violation and that are red-tagged have been operating outside the regulations and have avoided costs that other tank owners/operators incurred quite some time ago.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment should not be affected by the proposed action under the presumption that there are not a high percentage of USTs that will be found noncompliant, since the requirements have been in effect since 1998. However, other UST facilities in the area of a red-

tagged UST could see higher sales during the period of time the red-tagged UST is undergoing remedial action. Some red-tagged UST facilities may choose not to upgrade due to the cost of the upgrade or other compliance issues and may close their facilities. Loss of jobs may occur from the closing of a facility, but business competition may increase from customers looking for a new facility from which to purchase motor fuel.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The proposed rule establishes standards for the red tag/delivery prohibition of regulated substances for underground storage tanks (USTs). It sets forth the requirements the owner/operator of the UST must meet in order to continue to receive delivery of fuel, and for when the department may prohibit the delivery of fuel.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The 2005 Underground Storage Tank Compliance Act, which amends Section 9003 in Subtitle I of the Solid Waste Disposal Act, mandates states authorized to administer the Underground Storage Tank Program to take certain actions to reduce the incidence of leaking USTs. One such action is to establish delivery prohibition of regulated substances for USTs that have not met the required 1998 standards or are not compliant with spill prevention, overfill protection, release detection, corrosion protection, or registration requirements. This action must be implemented to maintain funding of the UST program in the state and to provide a serious consequence to those owners and operators that continue to be out of compliance with the regulations. This action will further enhance our effort to maintain protection of human health and the environment.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No expenditure of funds is anticipated.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ Yes. If yes, attach documentation.

(b) _____ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 06-07	FY 07-08	FY08-09
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSE	-0-	Minimal	Minimal
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	Minimal	Minimal
MAJOR REPAIR & CONSTR	-0-	-0-	-0-
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

Initially the department will experience an increase in workload from setting up a database to track the red-tagged facilities and other procedural aspects of program implementation. In addition, the tagging and removal of tags will lead to some increased effort by department staff. However, this effort is minimized by the fact that inspections are currently being performed, with follow-up inspections where problems are noted. Additional enforcement actions may result from the discovery of new non-conforming USTs, further increasing paperwork and workload. These increases should stabilize as the program advances.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 06-07	FY 07-08	FY08-09
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	Minimal	Minimal
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	Minimal	Minimal

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The agency will implement the proposed rule with current funding. EPA will provide minimal funding for the implementation of all phases of the Energy Act, with delivery prohibition being a part of it. However, the funding will be minimal and will be spent mostly on the inspection components required by the act.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

The proposed rule will not affect local governmental units with any new costs or savings. The presumption is that local governmental units have complied with the regulations and will not incur red-tag designations.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

No sources of funding for local governmental units will be affected by the implementation of this proposed rule.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 06-07	FY 07-08	FY08-09
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL			

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

There will be no effect on revenue collections of state and local governmental units.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Owners and operators of USTs that are not upgraded or are in violation of the 1998 requirements, and motor fuel distributors to those owners and operators, will be affected by this proposed rule. Owners and operators will not be able to receive additional motor fuel until they bring their USTs into compliance with the regulations. This will affect the owners' and operators' business operations until the USTs are in compliance. The motor fuel distributors will be impacted by the loss of a sale to these owners and operators. It is important to note that owners/operators that are found in violation and that are red-tagged have been operating outside the regulations and have avoided costs that other tank owners/operators incurred quite some time ago.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will be a loss of income to owners and operators of USTs found to be in violation of the regulations until they have taken remedial action to become compliant and qualify for the removal of the red tag. The motor fuel distributor will experience a loss of income, also, by not being allowed to sell the fuel to the owner/operator of the non-compliant UST until the UST qualifies for the red tag removal. However, in both instances, this may only impact one of several USTs at a facility. The owner/operator can continue to operate other USTs that are in compliance at the facility.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

Competition and employment should not be affected by the proposed action under the presumption that there are not a high percentage of USTs that will be found noncompliant, since the requirements have been in effect since 1998. However, other UST facilities in the area of a red-tagged UST could see higher sales during the period of time the red-tagged UST is undergoing remedial action. Some red-tagged UST facilities may choose not to upgrade due to the cost of the upgrade or other compliance issues and may close their facilities. Loss of jobs may occur from the closing of a facility, but business competition may increase from customers looking for a new facility from which to purchase motor fuel.